IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 1903/2000

HARI SINGH
Vs.
THE RAJASTHAN STATE ROAD TRANSPORT CORPORATION & ANR.

DATE: 06.09.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. R.C. Joshi for the petitioner.
Mr. Virendra Lodha for the respondents.

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The petitioner is a registered contractor with the Public Works Department of Govt. of Rajasthan in 'B' category and applied pursuant to the tender issued by the Rajasthan State Road Transport Corporation (for short 'the RSRTC') for construction work amounting to Rs. 34,00,000/- and also deposited earnest money on 16.08.99.

The petitioner has preferred the instant writ petition against the order dated 26.02.2000 (Ex.4) endorsed to the petitioner, whereby the RSRTC, Jaipur has mentioned that this office invited tenders for construction of road and drain at Depot Workshop, Dausa which were scheduled to be received on 16.08.99. Eight tenderers have participated and the tenders were opened

on the same day i.e. 16.08.99. The rates quoted by M/s Sunil Construction Co., Dausa stood the first lowest in the tender. After above course, Shri Hari Singh, the petitioner, out of the above eight tenderers has submitted application voluntarily addressed to S.E. (Civil) received in it's office on 24.08.99 for negotiations. Thereafter the petitioner submitted telegraphic message which was received in this office on 23.08.99 for negotiations and also submit a letter to Managing Director on 07.09.99 and Financial Advisor On 08.09.99.

The petitioner vide his application dated 01.12.99 requested this office for refund of earnest money amounting to Rs. 68,000/- which was deposited by the petitioner against the tender for the above said work vide cash receipt No. 141452 dated 16.08.99. The respondents processed the application submitted by the petitioner for taking a decision and as per the decision given by the Financial Advisor on 22.02.2000 and M.D. On 23.0.2000, earnest money amounting to Rs. 68,000/- was forfeited as per rule Append. 11-RPWA 100 1 Rule 322 and Note 11 below Rule 331 28(a) of PWF & AR and the petitioner was also debarred fro participation of future tenders of the Corporation.

The main challenge to the impugned order dated 26.02.2000 is on the ground that Rules RPWA 100(1), 352 and note 11 below Rule 331 and Rule 28(a) of PWF & AR which provide for penalising a person without giving him an opportunity of defending himself and providing unbridled and arbitrary power in the hands of the respondent is untravires of Article 14, 19 and 300(A) of the Constitution of India and the order dated 26.02.2000 based on such rules deserves to be quashed and set aside.

Per contra, learned counsel appearing for the respondent Corporation submits that this writ petition is not maintainable in view of the fact that the present mater necessarily arising out of a contract and a matter pertaining to the tender notice coupled with the action and thus, as per the settled proposition of law as laid down by the Hon'ble Supreme Court and this Court, this writ petition is not maintainable.

It is further submitted by the learned counsel for the respondents that the petitioner has submitted an application on 31.08.99 wherein he had given out that he is ready to lower down the price by 25% and the same was as against his original price, wherein the petitioner has given price 14.97% below the tender amount and the said action of the petitioner was

contrary to the general rules and thus the petitioner became liable for debarring from business and forfeiture of the tender amount in view of Rule 28(a) and 28(b) of the General Finance and Accounts Rules.

It is also given out on the pertinent query made by this Court whether they have adopted GF & AR General Rules or not, the respondents filed an affidavit and along with the affidavit they have annexed the order dated 28.10.1965 (Annexure-R/1), which indicates that the Corporation has not framed its own financial and other rules and the principles laid down in GF & AR, Budget Manual, Treasury Manual, PW & FR, CCA Rules, subordinate Department Ministerial staff rules and Revised Pay Scales Rules have been adopted vide resolution No. 160 dated 24.09.1965.

I have heard rival submissions of the respective parties and have also carefully gone through the Rules 28(a) and 28(b) of the General Finance and Accounts Rules.

As per Rules 28(a) and 28(b), if a tenderer reduced the rates voluntarily after opening of the tender/negotiations his offer shall stand cancelled automatically and his earnest money shall be forfeited and action for debarring him from business shall be taken as per enlistment rules.

Thus, the respondents have rightly taken action against the petitioner and in any case, in my considered view, the petitioner has got no case for refund of the earnest money as the petitioner violated the Rules 28(a) and 28(b) of the General Finance and Accounts Rules.

In view of the aforesaid observations, the writ petition deserves to be dismissed being devoid of merit and the same is hereby dismissed with no order as to costs.

(K.S. RATHORE),J.

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